

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

CCB-Pol-97-

PETITION FOR
PREEMPTION
(47 USC § 253)

Petition of)
Lincoln County, Oregon, and the)
Economic Development Alliance of)
Lincoln County, a non-profit corporation,)
for Declaratory Ruling and Preemption)
Pursuant to Section 253 of the)
Communications Act of 1934)
of Certain Provisions of the Oregon)
Telecommunications Utility Law)

LINCOLN COUNTY

Lincoln County is located along the central Oregon coast. The traditional economy of the central Oregon coast has been based upon fishing, forestry, and tourism. In recent times, the forestry and fishing industries have declined, and tourism has flourished. However, unlike fishing and forestry, tourism does not generally provide for family wage jobs.

In order to address this situation, and in order to encourage economic growth along the central Oregon coast, the economic development plan of Lincoln County seeks to attract new industry and business. Lincoln County is located within 100 miles from many parts of the inland Willamette Valley, which is the most heavily populated and developed area of Oregon, and which features many high-technology suppliers and manufacturers. Therefore, a key component of Lincoln County's economic development plan calls for the development of a high-speed fiber optic data transmission network along the central Oregon coast, in order to make Lincoln County a more attractive place for businesses to locate.

1 The County and the Alliance each believe that CoastNet would not constitute
2 “telecommunications service” as defined by Oregon law, and would not be on a “for hire”
3 basis in any event, and therefore is not subject to the Certificate requirement. However, after
4 discussions with staff from the Oregon Public Utility Commission, the County and the
5 Alliance each became an applicant for a ruling and order of the Oregon Public Utility
6 Commission which either determined that the County and the Alliance were not required to
7 obtain a Certificate or, in the alternative, granted a Certificate to the County and the Alliance.

8 On September 18, 1997, the Oregon Public Utility Commission entered a final Order
9 in its case numbers CP 120, CP 191, and CP 215 (hereinafter the “Order”). A true copy of
10 that Order is attached to and made a part of this petition as Exhibit “1.” The Order not only
11 rejected the arguments of the County and the Alliance regarding the need for a Certificate,
12 but also declined to issue a Certificate on the ground that the PUD would also need a
13 Certificate and had failed to apply for one. In doing so, the Oregon Public Utility
14 Commission held that even the providing by the PUD of the Dark Fiber component by itself
15 (which is not independently capable of transmitting any communications without appropriate
16 electronics) is the provision of “telecommunications service” on a “for hire” basis, and
17 therefore the PUD, the owner of the dark fiber, needs a Certificate. The PUD, being a
18 municipality of limited constitutional authority, does not have the power to apply for such a
19 Certificate, and therefore the interpretation of Oregon telecommunications law by the Oregon
20 Public Utility Commission contained in the Order effectively precludes and prevents
21 CoastNet. This state ruling constitutes a barrier to entry in violation of Section 253 of the
22 Communications Act of 1934.

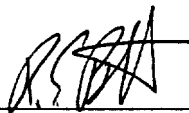
1 Furthermore, the Oregon Public Utility Commission had previously granted a
2 Certificate to another entity which proposed to utilize the PUD's Dark Fiber in the provision
3 of telecommunications service. *In re Application of LandsEdge Communications, Inc.*, PUC
4 docket No. CP 67, PUC Order No. 95-842 (August 10, 1995), a copy of which is attached to
5 this petition as Exhibit "2." Therefore, the Order also unfairly discriminates against the
6 County and the Alliance in violation of Section 253 (and also in violation of the equal
7 protection and privileges and immunities clauses of the Fourteenth Amendment to the United
8 States Constitution).

9 WHEREFORE, in accordance with Section 253(d) of the Communications Act of 1934,
10 the petitioners pray for an order of the Federal Communications Commission which:

11 (1) Preempts Oregon Revised Statute § 759.020(1) as interpreted and applied by the
12 Oregon Public Utility Commission in the attached Order; and

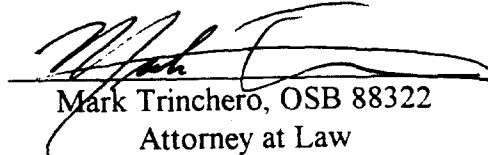
13 (2) Grants other relief that is just and equitable.

DATED this 12th day of November, 1997.



Rob Bovett, OSB 91026
Assistant County Counsel
Attorney for Plaintiff Lincoln County
225 West Olive Street, Room 110
Newport, OR 97365
(541) 265-4108

DATED this 13th day of November, 1997.



Mark Trinchero, OSB 88322
Attorney at Law

Davis Wright Tremaine LLP
Attorney for Plaintiff Economic Development Alliance
1300 SW 5th Avenue, Suite 2300
Portland, OR 97201
(503) 778-5318

POINTS AND AUTHORITIES

47 USC § 253

In re Petition for Preemption of Texas Telecommunication Law,
CCB Pol 96-13, 96-14, 96-16, and 96-19, FCC Order 97-346 (9/26/97)

In re Petition for Preemption of Wyoming Telecommunications Law,
CCB Pol 97-1, FCC Order 97-336 (9/23/97)

In re Petition for Preemption of Huntington Park Ordinance,
CCB Pol 96-26, FCC Order 97-251 (7/16/97)

In re Petition for Preemption of Connecticut Telecommunications Law,
CCB Pol 96-11, FCC Order 96-470 (12/6/96)

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 120
CP 191
CP 215

In the Matter of the Application of Siuslaw)
Public Library for a Certificate of Authority to)
Provide Telecommunications Services in)
Oregon and Classification as a Competitive)
Telecommunications Provider.)
)
In the Matter of the Application of Economic)
Development Alliance of Lincoln County for a)
Certificate of Authority to Provide)
Telecommunications Services in Oregon and)
Classification as a Competitive)
Telecommunications Provider.)
)
In the Matter of the Application of Lincoln)
County for a Certificate of Authority to)
Provide Telecommunications Services in)
Oregon and Classification as a Competitive)
Telecommunications Provider.)

ORDER

DISPOSITION: APPLICATIONS DENIED; DISMISSED

On December 7, 1995, Siuslaw Public Library District filed an application for a certificate to provide telecommunications service in Oregon (CP 120). On July 7, 1996, the Economic Development Alliance of Lincoln County (the Alliance) filed an application for a certificate to provide telecommunications service in Oregon (CP 191). On September 3, 1996, Lincoln County filed an application to provide telecommunications service in Oregon (CP 215). These cases were consolidated for consideration by the Commission.

U S WEST Communications, Inc., (USWC) filed protests to all three applications. GTE Northwest Incorporated (GTE) filed protests in dockets CP 120 and CP 215.

On January 31, 1997, Siuslaw Public Library District (CP 120) withdrew its application. That application is therefore dismissed in this order and not further considered.

The Applications

CP 191

The Alliance amended its application on February 20, 1997, and again on May 30, 1997. The final amended application is as follows:

Applicant will be a reseller of data communications services, utilizing a fiber optic network system known as CoastNet, which will be comprised of transport capacity contributed by the County through intergovernmental agreement with the Central Lincoln People's Utility District, and switches and routers contributed by the Economic Development Alliance. Only interexchange authority was requested.

CP 215

Lincoln County amended its application on February 20, 1997, and again on May 30, 1997. The final amended application is as follows:

Applicant will be a reseller of data communications services, utilizing a fiber optic network system known as CoastNet, which will be comprised of transport capacity contributed by the County through intergovernmental agreement with the Central Lincoln People's Utility District, and switches and routers contributed by the Economic Development Alliance. Only interexchange authority is requested.

The Commission interprets the applications as requesting certification to provide interexchange, point-to-point private line services in increments of T1 or greater by resale of CLPUD fiber. The Alliance will combine resold CLPUD fiber with the Alliance's switches and routers.

Background and Purpose of the Applications

Lincoln County and the Alliance (herein "Applicants") provided a description of the purposes of their proposed services. The Alliance is a not-for-profit corporation existing for the purpose of promoting economic development and employment opportunities in Lincoln County. The Central Lincoln People's Utility District (CLPUD) provides electric power services in Lincoln County and portions of a number of other counties. To facilitate its internal communications, CLPUD has installed a fiber optic network throughout much of its territory. The network has large amounts of capacity beyond that needed by CLPUD for its own communications.

When the Alliance became aware of CLPUD's excess fiber-optic capacity, it and 38 other public and not-for-profit entities created a project known as CoastNet to gain access to that capacity as a means of encouraging growth and economic development. CoastNet seeks to accomplish the following objectives: 1) Arrange to lease CLPUD's excess fiber optic capacity through an intergovernmental agreement between Lincoln County, and CLPUD, or both; 2) Purchase the equipment needed to enable that excess capacity to operate as a high-speed communications network; and 3) Make that network available to public entities and to businesses (both those existing in the County and those targeted for recruitment), particularly businesses to whom access to a high-speed fiber optic network is of significance. CLPUD has agreed to lease its excess fiber optic capacity to Lincoln County. The Alliance has obtained economic development grants for the CoastNet project.

In its May 30, 1997, filing amending its application and that of the Alliance, Lincoln County clarified the description of the legal framework for the CoastNet project as a whole as follows:

The CoastNet project

The Fiber

The Central Lincoln PUD has installed an extensive fiber optic and microwave network in Lincoln County and parts of a number of other counties. The network has significant excess capacity beyond that which the PUD will be using for its own purposes. This excess capacity affords a tremendous opportunity for economic development along the central Oregon coast. However, there is some question as to whether the PUD has the legal authority to engage in telecommunications services. Therefore, through an ORS Chapter 190 intergovernmental agreement, the PUD has agreed to share that excess capacity with Lincoln County. The effect of that agreement is a sharing of authority and powers between the County and the PUD for purposes of the excess capacity. ORS 190.030.

The Switches

The Economic Development Alliance of Lincoln County, a non-profit corporation, has obtained a grant from the Oregon Economic Development Department for the purchase and installation of a number of fiber optic routers and switches.

The Network

The County and the Alliance intend to enter into a contract to combine the PUD/County fiber with the Alliance's switches. The contract will provide

for the marketing and use of this high-speed digital data transmission network.

In a June 6, 1997, letter to protestant GTE, Lincoln County further described the operation of the CoastNet project as follows:

The contract will most likely appoint the Alliance as the entity responsible for offering the bundled CoastNet service to users. Some users will be end use customers who will contract directly with the Alliance for the bundled CoastNet service. Others will be third party resellers (who will be required to have a Certificate of Authority from the PUC), who would resell bundled CoastNet service to end use customers.

Issues

A prehearing conference was held on January 29, 1997, before Administrative Law Judge Allen Scott. The following issues list was adopted:

1. Do the remaining applicants need a certificate to do what they intend?
2. Does the CLPUD need a certificate to provide the service proposed to applicants?
3. If applicants or CLPUD need certificates, should the Commission grant them?

The parties agreed to address the issues in written comments. No party requested an evidentiary hearing.

CLPUD's Status

CLPUD is on the service list for these cases but is not a party. It became apparent during the proceeding that a question exists as to whether CLPUD needs a certificate to provide the proposed service to applicants. In a prehearing conference memorandum issued on February 6, 1997, the Administrative Law Judge invited CLPUD to become a party in the case. It did not do so. In its written comments, PUC Staff argued that CLPUD needs a certificate to provide the service and suggested that CLPUD be given time to respond to Staff's comments. On March 18, 1997, the Administrative Law Judge issued a memorandum giving CLPUD an opportunity to respond to Staff's arguments. CLPUD filed no response.

Issue 1—Do applicants need a certificate?

Position of the Parties. Staff argues that both applicants need a certificate to provide the proposed service. Staff claims that the service is a "telecommunications service" under ORS 759.005(2)(g), which states as follows:

"Telecommunications service" means two-way switched access and transport of voice communications but does not include:

- (A) Services provided by radio common carrier.
- (B) One-way transmission of television signals.
- (C) Surveying.
- (D) Private telecommunications networks.
- (E) Communications of the customer which take place on the customer side of on-premises equipment.

Staff's position is based on the Commission's prior holding that the definition of telecommunications service in ORS 759.005(2)(g) includes facilities which are *capable* of voice transmission, whether or not they are used for that function. *See Application of Electric Lightwave, Inc.*, Order 92-345 at 8-9. The dark fiber to be used for the proposed service is capable of voice transmission, according to Staff. Staff then asserts that because the applicants will provide telecommunications service, they come within the reach of ORS 759.020(1), which requires that anyone providing intrastate telecommunications service on a for-hire basis have a certificate.

GTE and USWC agree that Staff's position is supported by prior Commission cases. USWC argues, however, that the term "telecommunications service" should be interpreted more narrowly than the Commission has done in the past. USWC asks that if the Commission adopts a more narrow interpretation, it be applied to all other entities who provide services of the same kind as those proposed by applicants.

Applicants disagree with Staff. They first claim that the Commission's past interpretation of the definition of "telecommunications service" is too broad. The statutory definition of telecommunications service as "two-way switched access and transport of voice communications" is, in applicants' view, clear and unambiguous and does not include data communications. They also claim that the Commission's broad interpretation of "telecommunications service" is not consistent with the Commission's actual practice. In their view it would, for example, require Internet service providers to obtain certificates because the Internet is capable, and in fact is being used, for digital voice communication. Applicants also argue that their proposed service is not being offered on a "for-hire" basis. They claim that the "for-hire" requirement in ORS 759.020 is intended to encompass only "those that provide or offer telecommunications service to the general public." Applicants argue also that even if facilities *capable* of voice transmission are telecommunications services, their proposed service is not within the definition because the fiber optic system they will use is not "*independently capable*" of voice communication (emphasis added).

Applicants also claim that adoption of Staff's position would violate 47 USC Sec. 253 (a) of the 1996 Telecommunications Act (the Communications Act of 1934, 47 USC 151 *et seq.*, as amended by the Telecommunications Act of 1996, herein called the Act), which provides as follows:

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

According to applicants, Staff's broad interpretation of "telecommunications service," when read together with the "entry barrier" elements in ORS 759.020 and OAR 860-032-0005 (our administrative rule relating to applications for certificates of authority), violates the Act. Applicants acknowledge that the Act sets out several exceptions to the above provision (discussed below) but claim that none is applicable to the present case.

Issue 1—Disposition. We conclude that applicants need certificates. Our prior decisions have explicitly held that the term "telecommunications service" includes the provision of facilities that have the capability of voice transmission, regardless of their actual use. *Electric Lightwave*, Order No. 92-345. We considered in Order No. 92-345 the same issues presented here. Applicants have provided no convincing reason for modifying that position. We conclude from the record that the facilities both applicants intend to provide will be capable of voice transmission and that applicants therefore intend to provide telecommunications service. They need a certificate to do so under ORS 759.020.

Applicants' argument that the fiber optic is not "independently capable" of voice transmission is not persuasive. Applicants do not explain their position. Our prior discussion of this issue in Order No. 92-345 did not limit the definition of "telecommunications service" to facilities which by themselves, without aid from other mechanisms, could carry voice transmissions. We decline to do so here. Such a limitation would make the definition so narrow as to all but disappear. All media used for modern telecommunications need electronics and other apparatus before voice transmissions can actually occur.¹ That fact does not render them *incapable* of voice transmission. We conclude that the fiber optics to be used by applicants have the capability of voice transmission.²

Applicants' argument relating to the "for-hire" requirement is also not persuasive. They argue that the legislative history of ORS 759.020, the statute requiring certification, "makes clear" that a certificate is required only "for those that provide or offer telecommunications service to the general public." As applicants will contract with a

¹ Applicants acknowledge that the leased dark fiber is a component of a system which will be capable of voice communication.

² The Commission recently affirmed that dark fiber is a "Telecommunications Service." See Order No. 96-188 at 40, Appendix 6 at 1; Order No. 96-283, Appendix C at 1; and Order No. 97-021, Appendix A at 16-17.

limited number of other providers, the service will not, in applicants' view, be offered to the general public.

We are not persuaded by this argument. ORS 759.020 says nothing about the "public" or the "general public." The only authority cited by applicants for engrafting that concept onto the statute is a memorandum to a legislative committee by the then Commissioner of the PUC. That slender piece of evidence is not sufficient to establish a meaning that is not suggested by the actual wording of the statute. The term "for-hire" simply means for remuneration of some sort. That term does not carry with it an implicit designation of the source of the remuneration. In any event, applicants acknowledge that the service will be made available to various customers. Even if we did read the concept of service to the public into ORS 759.020, applicants' proposed service would meet that standard. Applicants presented no other basis for their argument on this point. The argument fails.³

We next consider applicants' argument that the 1996 Telecommunications Act prevents the Commission from requiring them to have a certificate. We conclude that the anti-barriers provision in 47 USC 253(a) does not prohibit the Commission from applying the provisions of ORS 759.020. The federal Act specifically guarantees continued State Regulatory Authority in 47 USC 253 (b) by providing broad exceptions to the anti-barriers statute:

State Regulatory Authority.—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

The purposes behind our statutes and regulations requiring that providers of telecommunications service be certified are within the scope of these exceptions. Those statutes and regulations protect the public safety and welfare and ensure the quality of the service. They are also designed to protect the rights of consumers and to further our goal of ensuring universal service, the subject of section 254 of the Act. We note additionally that ORS 759.015 sets out the goals of the State of Oregon regarding telecommunications services and directs the Commission to administer statutes in accordance with that policy:

The Legislative Assembly finds and declares that it is the goal of the State of Oregon to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition. The commission shall administer

³The term "to or for the public" is used in ORS 759.005 (1)(a)(A), the definition of "telecommunications utility." That definition is not relevant to this case. It is not syntactically or logically connected to the "for-hire" requirement in ORS 759.020, the statute setting out the certification requirement. Applicants require authority as competitive telecommunications providers; that status does not involve any common carrier obligation to serve the general public.

the statutes with respect to telecommunications rates and services in accordance with this policy.

Those goals guide us in our interpretation and application of relevant statutes and regulations. For the most part, the goals set out above, such as the maintenance of high-quality service and the encouragement of innovation, fit into the "exceptions" provision of 47 USC 253 (b), which allow state requirements that provide for universal service, protect the public safety and welfare, ensure quality of service, and safeguard consumer rights. We conclude that ORS 759.020 comports with the goals established in ORS 759.015 and is thus not in conflict with the anti-barrier provisions of the Act.

Issue 2—Does CLPUD need a certificate?

Position of the Parties. The parties here repeat some of the arguments they made with respect to Issue 1. Staff believes that the proposed provision of excess capacity fiber (also known as "dark fiber") by CLPUD is the provision of telecommunications service on a for-hire basis and that CLPUD must therefore have a certificate. GTE agrees that the Commission's prior holdings lead to the conclusion that CLPUD needs a certificate.

CLPUD, as noted above, has not applied for a certificate and has chosen not to actively participate in this proceeding. Applicants argue that CLPUD does not need a certificate. They repeat their argument that the provision of fiber optics is not the provision of telecommunications service. In addition, they argue that the fiber optic to be leased is not "switched" and thus does not fit within the definition of telecommunications service in ORS 759.005(2)(g). Applicants also claim that CLPUD's provision of dark fiber to Lincoln County will not be on a "for-hire" basis.

Issue 2—Disposition. The Commission concludes that CLPUD needs a certificate to provide the service it proposes, the leasing of dark fiber to the Applicants. Under ORS 759.020(1), any person must have authority from the Commission to provide services capable of voice communications for hire. For the reasons cited above in our discussion of Issue 1, we conclude that CLPUD's provision of dark fiber as proposed is the provision for hire of facilities that have the capability of voice transmission. Applicants' argument that the service is not "switched" is unpersuasive. As we have noted before (*See, e.g., Electric Lightwave, Inc.*, Order No. 92-345), the phrase "transport of voice communications" in the definition of telecommunications service in ORS 759.005(2)(g) is separate from the phrase "two-way switched access." Thus, it is of no consequence whether or not the service proposed by CLPUD is switched.

Effect of the Intergovernmental Agreement

Lincoln County filed with the Commission a copy of the intergovernmental agreement it has entered into with CLPUD pursuant to ORS 190.030. Although Lincoln

County does not explicitly state its view on the importance of this agreement to this case, the Commission assumes that the County believes the agreement is relevant.

The County may be asserting that its intergovernmental agreement with CLPUD eliminates the need for CLPUD to have a certificate. ORS 190.030 provides that when an agreement is entered into between two units of local government, the unit "designated therein to perform specified functions or activities is vested with all powers, rights and duties relating to those functions and activities that are vested by law in each separate party to the agreement, its officers and agencies." Thus, Lincoln County may believe that if it is granted a certificate, it can share that authority with CLPUD, who will thus need no certificate.

Staff and GTE filed comments which did not change their prior position that CLPUD needs a certificate to provide the service.

We have little in the record relating to the impact of the intergovernmental agreement on CLPUD's need for a certificate. Lincoln County did not provide any argument on the point. CLPUD provided none. As we noted above, under ORS 759.020 CLPUD needs a certificate to provide the service. We have not been shown that the intergovernmental agreement changes that fact.

Issue 3—Should the Certificates be Granted?

Position of the Parties. Staff argues that applicants cannot be granted a certificate because they will lease or purchase the telecommunications services involved from CLPUD, which is not an authorized provider. Staff states that except for this impediment, it would recommend approval of the certificates.

GTE argues that applicant Lincoln County does not have the legal authority to provide the service.⁴ GTE points out that Oregon counties are creations of statute and argues that a County's powers are limited to those specifically established by the legislature. According to GTE, those enumerated powers do not include operation as a telecommunications provider. GTE claims that where the legislature has intended for counties to engage in utility-type operations, it has expressly authorized that function, as in the operation of railroads under ORS 271.007-271.540.⁵

Applicants, as noted above, aver that they do not need certificates. If the Commission determines that they do need certificates, however, they argue that their applications should be granted because the service they will provide is in the public interest. They argue that the service would serve the purposes of ORS 283.500, for example, which encourages the development of information technology in government and other services as a way of improving economic opportunities and the quality of life.

⁴GTE did not protest the application of the Alliance.

⁵ GTE also offers the view that CLPUD does not have the legal authority to undertake the provision of telecommunications service. As we have no application by CLPUD before us, we need not consider that argument.

Lincoln County disputes GTE's claim regarding the County's authority to perform the proposed service. It cites authority for the proposition that Oregon counties have broad general powers over matters of general concern. It avers that economic development and employment opportunities fit within the ambit of its authority.

Issue 3—Disposition. CLPUD has not applied for a certificate and there is, of course, no basis for granting one to it in this proceeding.

Lincoln County and the Alliance argue that the certificates should be granted because the service they propose is in the public interest. They point to the benefits to the local economy and quality of life that would follow from development of information technology.

ORS 759.020(4) provides as follows, in pertinent part:

After hearing, the Commission shall issue the certificate only upon a showing that the proposed service is required by the public interest.

The issues in this case have been thoroughly argued by the parties through written comments and briefs. No party requested an evidentiary hearing. The Commission concludes that the proposed service has not been shown to be in the public interest. The applications of Lincoln County and the Alliance involve purchase or leasing of facilities from CLPUD. As we have noted above, CLPUD must have a certificate to provide that service. It does not have a certificate and has not applied for one. It is thus not an authorized seller of that service. CLPUD would violate ORS 759.020(1) if it provided the proposed service to Lincoln County and the Alliance. It is not in the public interest to grant an application which will involve purchase of service from an unauthorized seller. To do so would be to sanction unlawful acts. We will therefore deny the applications of Lincoln County and the Alliance.

CONCLUSIONS

1. The services proposed by Lincoln County and the Economic Development Alliance of Lincoln County have not been shown to be required by the public interest.
2. The applications for a certificate of Authority to Provide Telecommunications Service in Oregon and Classification as a Competitive Provider by Lincoln County and the Economic Development Alliance of Lincoln County should be denied.
3. The application for a certificate filed by the Siuslaw Public Library District should be dismissed.

ORDER

IT IS ORDERED that:

1. The application by Lincoln County for a certificate of Authority to Provide Telecommunications Service in Oregon and Classification as a Competitive Provider is denied.
2. The application by the Economic Development Alliance of Lincoln County for a certificate of Authority to Provide Telecommunications Service in Oregon and Classification as a Competitive Provider is denied.
3. The application for a certificate filed by Siuslaw Public Library District is dismissed.

Made, entered, and effective SEP 18 1997

COMMISSIONER HAMILTON WAS
UNAVAILABLE FOR SIGNATURE

Roger Hamilton
Chairman



Ron Eachus
Commissioner




Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order within 60 days from the date of service pursuant to ORS 756.561. A party may appeal this order pursuant to ORS 756.580.

cp191Den.doc

APPLICATION FOR CERTIFICATE OF AUTHORITY TO PROVIDE TELECOMMUNICATIONS SERVICE IN OREGON

INSTRUCTIONS: This application is to be completed and two copies returned to the Public Utility Commission of Oregon. The parts to be completed by the three different classes of telecommunications providers are listed below in the section "Classes of Telecommunications Providers".

CLASSES OF TELECOMMUNICATIONS PROVIDERS (CHOOSE ONE)

- ☒ A. Competitive Provider (with no Shared Telecommunications Services). Complete parts 1, 2, 3, 4, 5, 6, 7, 8 & 9.
☐ B. Competitive and Shared Telecommunications Services. Complete parts 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10.
☐ C. Shared Telecommunications Services, Only. Complete parts 1, 2, 3, 4, 8 & 10.

1	Business Name of Applicant LandEdge Communications, Inc.	Phone Number (503) 764-3058
	Business Address P.O. Box 402, Gleneden Beach, OR 97388	
2	Name of person to be contacted by PUC for further information Edwin B. Parker	Title Chairman
	Address P.O. Box 402, Gleneden Beach, OR 97388	
	Phone Number (503) 764-3058	
3	List each entity affiliated with applicant which is providing any telecommunications services in Oregon, whether such entity is certified or not, and whether services provided are regulated or not. List the services provided by each entity. If no entities providing telecommunications services in Oregon are affiliated with applicant, state "None". ("Affiliated interest" is defined in ORS 759.010, attached.) none	
4	In any one hour period, no more than <u>1</u> % of service attempts by customers of applicant will experience failures due to insufficient or inadequate facilities. Applicant consents that the foregoing quality of service may be a condition of its authority to operate as a competitive and/or shared services provider in Oregon, and that failure to comply with this condition, or any other conditions in its certificate, may be used as grounds for its suspension or revocation under OAR 860-32-015.	
5	Describe each telecommunications service for which application is made. Internet Access, private line services, data networking services including LAN interconnection, computer conferencing, video conferencing.	
6	Where will these services be provided. (List "statewide" or specify cities or counties.) Oregon coastal counties, initially Lincoln County and coastal portions of Lane and Douglas counties, with connections from coastal locations to points in the Willamette Valley.	
7	Describe the manner in which these services will be provided and the extent to which facilities of other carriers will be utilized. Provide names of facility owners if applicant is reselling service. We will be a reseller of telecommunications services using the underlying facilities of other entities as needed to meet the requirements of our customers. We anticipate that we may be reselling services of local exchange carriers, including U S WEST, Sprint/United, GTE, PTI and/or Pioneer, of excess capacity from private government networks, including Lincoln County and/or Central Lincoln PUD, and of interexchange carriers, including AT&T, Sprint and/or MCI.	

For each service and location listed in Questions 5 and 6, specify the extent to which competition or alternative services are present.

- 8 Internet access is available by dial-up from a variety of providers, including Oregon Net's Compass. (Some services require a toll call.) Customers are able to obtain private line services directly from existing carriers or from privately owned facilities. Systems integrators could put together data networks for customers when acting as their agents.

9a Describe measures of compliance with ORS 759.690 regarding operator services. USE ADDITIONAL SHEET IF NEEDED.

Not applicable

9b If applicant intends to provide direct operator service (AOS), specify the planned locations of:
Switching facilities:

Operators:

9c ☒ I understand it is my responsibility to insure that the operator services provided to my customers comply with the Commission's rules. (Check box at left.)

For the applicant's shared services:

10a Identify and describe the shared telecommunications service which you plan to provide in Oregon.

10b Describe the user group comprised of one person or association to which service will be provided.

10c Provide the address of the building or the location of the contiguous complex of buildings where the service will be provided through privately owned customer premises equipment. If the applicant intends to serve a user group located in two or more structures or buildings, provide a map clearly describing the contiguous boundaries of the area to be serviced by the provider.

PLEASE USE ADDITIONAL SHEETS IF NECESSARY TO FULLY ANSWER ANY ITEM.

By accepting a certificate granting authority to provide telecommunications service in Oregon, the applicant agrees to the following:

- Certificate holder shall only provide telecommunications services authorized by the certificate.
- Certificate holder shall not abandon service except as provided in the Commission's rules.
- Certificate holder's books and records shall be open to inspection by the Commission to the extent necessary to verify information required of the applicant by the Commission's rules.
- Certificate holder shall maintain its books and records according to generally accepted accounting principles and the applicable rules of the Commission.
- Certificate holder shall pay all access charges and subsidies imposed pursuant to the Commission's rules.
- Certificate holder shall comply with the Commission's rules applicable to the certificate holder.

Signature of Person Authorized to Represent Applicant

Edwin B. Parker

Printed Signature

Edwin B. Parker

Title

Chairman

Date

July 6, 1995

ORDER NO. **95-842**

ENTERED **AUG 10 1995**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 67

In the Matter of the Application of)
LandsEdge Communications, Inc. for) **ORDER**
authority to provide operator assisted)
telecommunications services in Oregon as a)
competitive provider.

DISPOSITION: GRANTED

NOTE: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

INTRODUCTION

LandsEdge Communications, Inc. filed this application on July 7, 1995. The application requests authority to provide toll and operator-assisted telecommunications services in Oregon as a competitive provider.

The Commission served notice of the application on the Commission's telecommunications mailing list on July 12, 1995. The Commission did not receive any protests.

FINDINGS OF FACT

Based on the application and the Commission's records, the Commission makes the following findings of fact:

The Proposed Operation

The company will provide toll services through the resale of the services of other Oregon interexchange carriers. Operator services will not be directly provided by the

company. A statement of compliance with PUC Order No. 90-96 and ORS 759.690 was included in the application.

OPINION

Applicable Law

ORS 759.020 provides that:

(1) No . . . corporation . . . shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the commission under this section.

* * *

(5) The commission may classify a successful applicant for a certificate as a . . . competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider For purposes of this section, in determining whether there are reasonably available alternatives, the commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.

ORS 759.690 and OAR 860-32-005 establish certain requirements providers of operator services must meet. Included are the following conditions:

The certificate holder involved in the provision of operator services shall:

1. Notify all callers at the beginning of the call of the telecommunications provider's name and allow a sufficient delay period to permit a caller to terminate the call or advise the operator to transfer the call to the customer's preferred carrier.
2. Disclose rate and service information to the caller when requested.
3. Not transfer a call to another operator service provider without the caller's notification and consent.
4. Not screen calls and prevent or "block" the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder shall, through contract provisions with its reseller clients, prohibit the reseller from blocking a caller's access to his or her operator service company of choice.
5. When entering into operator service contracts or arrangements with clients who in turn resell or provide telephone service to the general public include in that contract provisions for public notification. A sticker or name plate identifying the name of the certificate holder shall be attached to, or in close proximity to, each telephone that has public access.

OAR 860-32-015(1) authorizes the Commission to suspend or cancel the certificate if the Commission finds that (a) the holder made misrepresentations when it filed the application, or (b) the applicant fails to comply with the terms and conditions of the certificate.

Resolution

Existence of Alternatives

AT&T, MCI, Sprint Communications Company, U S WEST Communications, and others provide toll and operator services in the service area requested by the applicant.

Viability of Alternatives

Applicant's customers or those proposed to become customers have reasonably available alternatives to applicant's services. Subscribers to applicant's services can buy comparable services at comparable rates from other vendors. If the subscriber resells the service, the Commission's rules enable the ultimate customer or end user to terminate the

call or select a different carrier before incurring charges. Telephone users must receive unscreened and unblocked service which allows them to reach the operator service provider of their choice. The applicant reselling operator services must include a provision in its contract with the reseller for public notification identifying the name of the certificate holder. The sticker or name plate must be attached, or in proximity, to the telephone.

Barriers to Entry

The level of competition in the market shows that both economic and regulatory barriers to entry into the market are relatively low.

CONCLUSIONS

Applicant has met the requirements for a certificate to provide telecommunications services as a competitive provider.

ORDER

IT IS ORDERED that the application of LandsEdge Communications, Inc. for authority to provide telecommunications services as a competitive provider is granted.

Made, entered, and effective

August 10, 1995



Mike Kane
Mike Kane
Assistant Commissioner
Utility Program

A party may request rehearing or reconsideration of this order within 60 days from the date of service pursuant to ORS 756.561. A party may appeal this order pursuant to ORS 756.580.

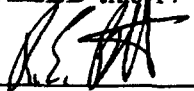
land

1 Don Mason
2 US WEST
3 421 SW Oak Street, Room 859
4 Portland, OR 97204
5
6 Joe Madraso
7 Pioneer Telephone Cooperative
8 PO Box 631
9 Philomath, OR 97370-0631
10
11 Michael Gaston
12 Siuslaw Public Library District
13 PO Box A
14 Florence, OR 97439

Dave Overstreet
GTE Northwest
PO Box 1100
Beaverton, OR 97075-1100

Ed Parker
Economic Development Alliance
PO Box 402
Glenden Beach, OR 97388

DATED and MAILED this 17th day of November, 1997.



Rob Bovett, OSB 91026
Assistant County Counsel
Attorney for Petitioner Lincoln County